

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4014 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SALIMKHAN @ SALIM BOBDO LALKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4014 of 2004
MR MM TIRMIZI for Petitioner No. 1
MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged his detention order dated 5.1.2004, by which he is detained as a "dangerous person", under the

Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner under the provisions of sec.457 and 380 of the Indian Penal Code. It is alleged against the petitioner that, the petitioner is indulging in committing theft of ornaments and mobile phones. After considering the aforesaid cases, and after considering the statements of some witnesses, whose names have not been disclosed to the petitioner, the authority has detained him as a "dangerous person" under PASA. The petitioner has challenged the impugned order by way of this petition.

3. Learned advocate for the petitioner has submitted that, so far as the aforesaid registered cases are concerned, they are all individual in nature and all these cases are in connection with theft of small amount. It is further submitted that by the said cases, it cannot be said that the petitioner has violated public order. In this behalf, learned advocate for the petitioner has relied upon a Division Bench judgment of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000(1) GLH 393. In para 22 of the said judgment, this Court has observed as under:

"para.22 So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No

order as to costs."

4. Considering the aforesaid aspect of the matter, the learned advocate for the petitioner submitted that, the cases registered against the petitioner are all individual cases and by the said cases, it cannot be said that the petitioner has violated public order, as, at the most, it can be said that the petitioner has violated law and order. On the aforesaid ground and in view of the Division Bench judgment of this Court, the petition is required to be allowed.

5. For the foregoing reasons, this petition is allowed. The order of detention dated 5.1.2004 is quashed and set aside. The detenu, Salimkhan @ Salim Bobdo Lalkhan Pathan, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/